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LONG POLE LUMBER CO. *v.* SAXON LIME & LUMBER CO.

Sept. 10, 1908.

[62 S. E. 349.]

1. Trial—Modification of Requests.—Refusal to charge requests as offered is not error where the court gives an instruction embracing all the questions covered by the requests, and states the law on those questions as favorably to the party asking them as it asked or was entitled to.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 46, Trial, §§ 651-659.]

2. Sales—Breach of Contract—Measure of Damages—Failure to Furnish Articles.—Where a seller fails to furnish the articles he has contracted to sell, the measure of damages is the difference between the contract price and the market price at the time and place for delivery, with interest; and, where the delivery is to be by installments, the value is to be estimated as of the time the several installments ought to have been delivered, but, if there is no market at the place for delivery, the basis for damages to the buyer is the value of the article in the nearest available market to which he may resort to supply himself, with any additional cost of transportation added, and any reasonable and necessary expenses attending repurchase.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 43, Sales, §§ 1174-1182.]

3. Trial—Instructions—Sufficiency of Evidence to Support.—In an action to recover for defendant's failure to deliver lumber sold, where the evidence tended to show that plaintiff made efforts to purchase lumber of like kind, and the expense incurred in such efforts, but did not show what repurchases were made nor the expense thereof with reasonable certainty, it was error to instruct that the expense of repurchases might be taken into consideration in ascertaining his damages.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 46, Trial, §§ 596-612.]

STEVENSON *v.* W. M. RITTER LUMBER CO.

Sept. 10, 1908.

[62 S. E. 351.]

1. Death—Action for Causing Death at Common Law.—At common law no action could be maintained for the death of a person by wrongful act, either by a husband or father suing for loss of services of wife or children, a master for the loss of his servant, or a personal representative suing in the right of his decedent; the action abating for technical reasons at the time of death.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 15, Death, § 10.]